

United States District Court
District of Massachusetts

_____)	
Edward Boyer,)	
)	
Petitioner,)	
)	
v.)	Criminal Action No.
)	14-10163-NMG
United States of America,)	
)	
Respondent.)	
_____)	

MEMORANDUM & ORDER

GORTON, J.

This case arises from the petition of Edward Boyer ("Boyer" or "petitioner") to vacate his conviction pursuant to 28 U.S.C. § 2255. Boyer is currently serving a sentence in accordance with an agreement to plead guilty.

On September 16, 2019, Magistrate Judge Judith Dein entered a Report and Recommendation ("R&R") recommending that the Court allow the motion to vacate. On April 7, 2020, this Court rejected that R&R and denied Boyer's motion to vacate.

Shortly thereafter, Boyer issued a notice of appeal to the First Circuit Court of Appeals and that court directed this Court to issue or deny a certificate of appealability with respect to Boyer's petition. This Memorandum and Order is in response to that directive.

Section 2253(c) of Title 28 of the United States Code provides that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a "substantial showing," a petitioner seeking a certificate of appealability must demonstrate that

reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.


Slack v. McDaniel, 529 U.S. 473, 484 (2000). To meet the debatable-among-jurists-of-reason standard the petitioner must prove "something more than the absence of frivolity or the existence of mere good faith." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

Because reasonable jurists could debate that the petition should have been resolved in a different manner this Court will issue a certificate of appealability.

ORDER

For the foregoing reasons, with respect to Boyer's motion under 28 U.S.C. § 2255 (Docket Entry No. 459), a certificate of appealability is hereby ISSUED.

So ordered.



Nathaniel M. Gorton
United States District Judge

Dated: April 21, 2020